

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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|----------------------|---|---------------------|
| PIERRE HARRIS, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 4:07 CV 656 DDN |
| |) | |
| AMERICAN MODERN HOME |) | |
| INSURANCE COMPANY, |) | |
| |) | |
| Defendant. |) | |

MEMORANDUM AND ORDER DENYING MOTION FOR NEW APPRAISAL

This action is before the court on the motion of plaintiff Pierre Harris for an order requiring the parties to conduct another appraisal of plaintiff's property (Doc. 55). The case is set for a jury trial on October 20, 2008. Defendant opposes the motion.

Plaintiff Pierre Harris commenced this action in the Circuit Court of the City of St. Louis. In his state court petition, Harris alleges that the home he owned at 3430 Grace Avenue was damaged by a windstorm and hailstorm on July 19, 2006. Harris made a claim on the property insurance policy issued by defendant American Modern Home Insurance Company (AMHIC) and AMHIC paid him \$5,735.60 after its claim representative, Arthur Smith, investigated the damage. John Grimes, an appraiser appointed by Harris, also conducted an investigation and estimated the damages at \$75,490.86. Harris alleges that AMHIC failed to pay the full amount of the claim, breaching the terms of the insurance policy. In the Count 1 claim for breach of the policy contract plaintiff Harris seeks recovery of \$75,490.86. Harris also alleges a Count 2 claim for statutory penalties for vexatious refusal to pay under Mo. Rev. Stat. § 375.420.

On May 30, 2008, the court sustained the motion of AMHIC for summary judgment in part because the appraisal of damages by Grimes was improper because he had an interest in the outcome of the appraisal proceedings and because his appraisal did not apply the standard required by the insurance policy. Plaintiff now, on the eve of trial, by motion filed almost four months after the summary judgment order, seeks an order for a new appraisal.

By his motion plaintiff seeks pretrial injunctive relief to which he is not entitled at this time, because he has an adequate remedy at

law, i.e. proof of his damages by other means, as argued by defendant, Laclede Gas Co. v. Amoco Oil Co., 522 F.2d 33, 39-40 (8th Cir. 1975), and because plaintiff has never claimed injunctive relief in these proceedings. This case has undergone several proceedings in this court and is set for trial.

For these reasons,

IT IS HEREBY ORDERED that the motion of plaintiff for an order for a new appraisal (Doc. 55) is denied.

IT IS FURTHER ORDERED that the parties shall file their papers in compliance with the pretrial order not later than October 13, 2008.

IT IS FURTHER ORDERED that the final pretrial conference is set for October 16, 2008 at 2:00 p.m.

/S/ David D. Noce
UNITED STATES MAGISTRATE JUDGE

Signed on October 7, 2008.